

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
)	

DEFENDANTS' MOTION FOR ORDER MODIFYING
JANUARY 21, 2004 ORDER REGARDING SPECIAL MASTER'S FILING
OF INFORMATION TECHNOLOGY SYSTEM REPORTS PREPARED BY
SPECIAL MASTER'S EXPERTS AND REQUEST FOR EXPEDITED CONSIDERATION

Pursuant to Rule 7(b) of the Federal Rules of Civil Procedure and Local Civil Rule 7, defendants respectfully move this Court for an order modifying this Court's Order filed January 21, 2004, directing the Special Master "to submit to the Court for filing in the public record in this case all the reports on the information technology systems of the defendants that were submitted to the Special Master by any contractor he retained in response to the December 17, 2001, Consent Order Regarding Information Technology Security." Order (filed Jan. 21, 2004) (Dkt. # 2444). In addition, because the Court's January 21, 2004 Order directs the Special Master to file reports in the record which could jeopardize the security of defendants' Information Technology ("IT") systems, defendants request expedited consideration of this motion and that the Special Master's filing of the reports be deferred until the Court rules upon this motion. Pursuant to Local Civil Rule 7(m), counsel for the defendants conferred with plaintiffs' counsel, Mr. Dennis Gingold, on January 22, 2004, regarding this motion, and

plaintiffs' counsel stated that plaintiffs would oppose this motion.¹

In support of this motion, defendants state as follows:

The Court's January 21, 2004 Order Should Be Modified To Protect Against the
Inadvertent Disclosure of Highly Sensitive Information Technology Security
Material

There can be no serious dispute that the reports to be filed by the Special Master pursuant to the Court's January 21, 2004 Order contain highly sensitive material regarding defendants' IT security. The Special Master recognized the sensitivity of the materials reviewed by his experts when he entered his Revised Order dated May 2, 2002, protecting various forms of confidential security information." Revised Order of Special Master (May 2, 2002); see Order (Feb. 6, 2003) (Dkt. # 1786) (ordering the filing of the Revised Order of the Special Master with Court). In his Revised Order, the Special Master listed the following twenty separate forms of "Confidential Information" requiring protection:

- Network diagrams
- Nessus outputs
- Whisker outputs
- Wardialing outputs
- Incident response plans
- Security policies
- Firewall configurations and rules
- Router configurations and rules
- Server configurations
- Dial-in configurations
- System hardening guides
- Penetration test results
- Virus inoculation procedures
- Forensic procedures

¹ During the conversation, Mr. Gingold stated, among other things, that plaintiffs did not understand what led to the Court's issuance of the January 21, 2004 Order and that while plaintiffs object to this motion, Mr. Gingold was agreeable to attempting to reach resolution of the matters described in this motion following further discussion with defendants' counsel.

- Device IP addresses
- Router Access Control Lists (ACLS)
- OS versions/Patch Levels
- Application Versions/Patch Levels
- Documents containing user names and IDs
- Topology diagrams

Revised Order of Special Master at 1-2 (May 2, 2002).

The Court's January 21, 2004 Order contains the following directive:

It is further ORDERED that each such report be redacted by the Special Master or his contractor to remove any information that might jeopardize the security of individual Indian Trust Data, including, but not limited to, identification of specific hosts or subnets scanned.

Order (Jan. 21, 2004) (emphasis added). While defendants recognize that this provision is intended to provide some level of protection against the disclosure of sensitive information, its terms are far less descriptive than those set forth in the Special Master's Revised Order.

Defendants respectfully submit that the Special Master's more expansive listing should serve as the minimal standard for redaction.

Aside from the expansiveness of the listing discussed above, strict compliance with the Court's January 21, 2004 Order would seriously jeopardize the security of defendants' IT systems because, by its terms, the Court's Order only requires redaction "to remove any information that might jeopardize the security of individual Indian Trust Data." Order (Jan. 21, 2004). Because the vast majority of defendants' systems do not house or access individual Indian Trust Data, by its terms, the Court's Order requires no redaction of reports related to those systems. The Court's January 21, 2004 Order plainly requires correction of this language.

Finally, given the volume of the reports, defendants respectfully suggest that it is

conceivable sensitive IT security material could be disclosed in the event the Special Master or his contractor inadvertently failed to redact the material. The Court's January 21, 2004 Order should be modified to allow defendants the opportunity to protect the United States' interests in any material that protects the security of its IT systems.

Accordingly, defendants respectfully request that the Court issue, on an expedited basis, an order directing the Special Master to defer filing any of his expert's reports until it has ruled upon the merits of this motion.² Defendants further respectfully request that the Court's January 21, 2004 Order be modified (1) to incorporate the description of confidential security information set forth in the Special Master's Revised Order and (2) to expand its scope to require redaction of all sensitive IT security material, without reference to individual Indian Trust Data. Finally, defendants respectfully request that the Court's January 21, 2004 Order be modified to allow defendants the opportunity to review the reports to be filed by the Special Master, following redaction by the Special Master or his contractor, for the purpose of permitting the defendants the opportunity to identify to the Special Master any additional sensitive IT security material requiring redaction before filing in the record. Defendants propose to undertake such a review promptly, in no more than five (5) business days after receipt of the reports from the Special Master, and to transmit the reports back to the Special Master promptly to allow his filing of the

² The Special Master's filing of a report that discloses sensitive IT security material will cause defendants irreparable harm to the extent such disclosure compromises the security of its systems.

reports following defendants' review.³

Respectfully submitted,

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January 21, 2004

³ In the event the Special Master and defendants disagree as to whether material requires redaction to protect the security of defendants' IT systems, defendants reserve the right to seek protection from this Court.

CERTIFICATE OF SERVICE

I hereby certify that, on January 22, 2004 the foregoing *Defendants' Motion for Order Modifying January 21, 2004 Order Regarding Special Master's Filing of Information Technology System Reports Prepared by Special Master's Experts and Request for Expedited Consideration* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
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/s/ Kevin P. Kingston
Kevin P. Kingston

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

GALE A. NORTON, Secretary of the Interior, et al.,

Defendants.

ORDER

This matter comes before the Court on *Defendants' Motion for Order Modifying January 21, 2004 Order Regarding Special Master's Filing of Information Technology System Reports Prepared by Special Master's Experts and Request for Expedited Consideration* (Dkt. # _____).

After considering that motion, any responses thereto, and the record of the case, the Court finds that defendants' request for expedited consideration should be, and hereby is, GRANTED. It is further

ORDERED that the Special Master shall not file the reports of his experts in the record until this Court has ruled upon the merits of Defendants' Motion for Order Modifying January 21, 2004 Order Regarding Special Master's Filing of Information Technology System Reports Prepared by Special Master's Experts (Dkt. # 2444).

ROYCE C. LAMBERTH
United States District Judge

cc:

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ORDER

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After considering that motion, any responses thereto, and the record of the case, the Court finds that defendants' motion should be, and hereby is, GRANTED. It is further

ORDERED that the second sentence of the first paragraph of the Court's January 21, 2004 Order (Dkt. # 2444) be stricken and replaced with the following: "It is further ORDERED that each such report be redacted by the Special Master or his contractor to remove any information that might jeopardize the security of individual Indian trust data or the security of any of defendants' Information Technology systems, including, but not limited to, the types of information described in the Special Master's Revised Order dated May 2, 2002, and filed with this Court's February 6, 2003 Order (Dkt. # 1786)." and it is

FURTHER ORDERED that the third sentence of the first paragraph of the Court's January 21, 2004 Order be stricken and replaced with the following: "It is further ORDERED

that following the redaction by the Special Master or his contractor, the reports shall be transmitted to defendants for prompt review, not to exceed 5 business days, to allow defendants to advise the Special Master if they identify any additional material requiring redaction prior to the filing of the reports in the record. The reports shall be submitted within 5 days following defendants' completion of their review of the reports."

SO ORDERED this ____ day of _____, 2004.

ROYCE C. LAMBERTH
United States District Judge

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